IN THE COURT OF APPEALS OF THE STATE OF ALASKA

RYAN W. COX, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11462 Trial Court No. 3PA-08-1354 CR MEMORANDUM OPINION No. 6344 — June 1, 2016

Appeal from the Superior Court, Third Judicial District, Palmer, Gregory Heath, Judge.

Appearances: James Alan Wendt, Law Offices of James Alan Wendt, Anchorage, for the Appellant. June Stein, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, and Allard, Judge.

Judge ALLARD.

Ryan W. Cox was convicted by a jury of first-degree sexual abuse of a minor, third-degree sexual abuse of a minor, and two counts of fourth-degree sexual abuse of a minor for anally penetrating his nine-year-old nephew and sexually touching two other boys when Cox was sixteen and seventeen years old.[1] Cox's case was referred

[1] AS 11.41.434(a)(1), AS 11.41.438(a)(3), and AS 11.41.440(a)(1), respectively.

to the three-judge panel for sentencing, and the panel imposed a composite term of 17 years to serve.

On appeal, Cox claims that, before his arrest, the state troopers interviewed him in violation of his *Miranda* rights, and the superior court therefore should have granted his motion to suppress the inculpatory statements he made during that interview. For the reasons explained here, we conclude that Cox's interview was not custodial and that the troopers therefore did not violate Cox's *Miranda* rights.

Cox also challenges the jury's finding that his first-degree sexual abuse conviction was among the "most serious" within the definition of that offense.[2] This claim is moot because the three-judge sentencing panel did not impose an aggravated sentence, and explicitly stated that it did not give any weight to this aggravating factor in sentencing Cox.

Why we conclude that Cox was not in custody during the police interview

Cox argues that he was subjected to custodial interrogation during his pre-arrest interview by the troopers, and that he was therefore entitled to *Miranda* warnings, which he did not receive.

Under *Miranda*, a suspect is entitled to be advised of his right against self-incrimination and his right to an attorney before he is subjected to "custodial" interrogation.[3] A person may be subject to custodial interrogation even though the person has not been formally arrested.[4] To determine whether an interrogation was

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[2] AS 12.55.155(c).

[3] *See Miranda v. Arizona*, 384 U.S. 436, 442, 444 (1966).

[4] *California v. Beheler*, 463 U.S. 1121, 1125 (1983).

custodial, we ask whether there was "restraint on freedom of movement of the degree associated with a formal arrest."[5]

In assessing this question, courts consider the totality of the circumstances, including "whether the defendant came to the place of questioning 'completely on his own, in response to a police request, or [was] escorted by police officers.'"[6] Courts also consider intrinsic facts about the questioning, "such as when and where it occurred, how long it lasted, how many officers were present, what the officers and defendant said and did, whether there were physical restraints, drawn weapons, or guards stationed at the door, and whether the defendant was being questioned as a suspect or witness."[7] Although courts also consider post-interrogation events, such as whether the defendant "left freely, was detained, or was arrested," these post-interrogation factors are given limited weight.[8]

A state trooper first contacted Cox about the allegations of sexual abuse by leaving a message on his voicemail. The next day, the trooper approached Cox at the McDonald's where he worked, and briefly talked with Cox in the open dining area of the restaurant. The trooper asked Cox if he was willing to go with him to the trooper station (which was nearby) so that they could talk more privately. Cox agreed to go. In the interview at the station, Cox admitted the conduct that led to his convictions.

Before the superior court ruled on Cox's motion to suppress, the court reviewed the audio recording of the trooper's contact with Cox at McDonald's, the video

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[5] *Kalmakoff v. State*, 257 P.3d 108, 121 (Alaska App. 2011) (quoting *State v. Smith*, 38 P.3d 1149, 1154 (Alaska 2002)).

[6] *Id.* (original quotation marks & citations omitted).

[7] *Id.* (original citations omitted).

[8] *Id.* (original citations omitted).

of Cox's subsequent interview at the trooper post, and the evidence presented at the evidentiary hearing on the motion, including Cox's testimony. Based on this review, the superior court acknowledged that "[t]here is no doubt, given [Cox's] age, experience, and embarrassment at being approached in front of his co-workers, that [Cox] was apprehensive at the time of the initial contact." But the court found that this apprehension had not compelled Cox to go to the trooper station against his will. The court noted that the trooper told Cox multiple times before they left for the station that Cox was not under arrest, that he would not be arrested that day, and that Cox walked voluntarily to the trooper's patrol car after talking privately with his manager. The court also observed that while Cox was young and inexperienced with the criminal justice system, he had done well in high school and had received a scholarship for college.

Two troopers interviewed Cox at the station. The superior court found that the troopers' tone remained conversational throughout the interview and that Cox was repeatedly told that the door to the interview room was unlocked, that he was not under arrest and that he did not have to talk to them, and that he was free to go at any time. In response to the advisement that he did not have to talk to them and was free to go any time, Cox stated: "No. I want to get my side of the story out, because I know what they're saying is lying." Within thirty minutes of the start of the interview, Cox began to make self-incriminating statements; the troopers drove him back to work approximately an hour after he left.

The superior court concluded that, given the totality of these circumstances, a reasonable person in Cox's situation would have felt free to leave and break off the questioning and Cox was not subject to custodial interrogation for purposes of *Miranda*.

On appeal, Cox emphasizes his youth and lack of criminal history, and asserts that the court should have taken those factors into account. But the record shows that the superior court did take these factors into account and found it significant that

Cox appeared to be more comfortable and less intimidated by the officers by the time they arrived at the police station and began the interview. We have reviewed the record and we agree with the superior court that Cox's rights under *Miranda* were not violated in this case.

Why we conclude that any error in the jury's finding of "most serious conduct" is moot

On appeal, Cox also challenges the jury's finding that his first-degree sexual abuse conviction was among the "most serious" within the definition of that offense.[9] However, as already explained, this claim is moot because the three-judge sentencing panel did not impose an aggravated sentence, and it explicitly stated that it did not give any weight to this aggravating factor in sentencing Cox.

Conclusion

We AFFIRM the decision of the superior court.

[9] AS 12.55.155(c).